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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/341,379	07/09/1999	VALERIO AISA	MERL0060US	5053

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EXAMINER

BECKER, DREW E

ART UNIT	PAPER NUMBER
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1761

26

DATE MAILED: 09/10/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/341,379

Examiner

Drew E Becker

Applicant(s)

AISA, VALERIO

Art Unit

1761

mk-28

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 34-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 34-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Request for Continued Examination*

1. The request filed on August 21, 2002 for an RCE based on parent Application No. 09/341,379 is acceptable and an RCE has been established. An action on the RCE follows.

### *Double Patenting*

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

3. Claims 34-41 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 38-73 of copending Application No. 09/868,020 in view of Edamula [Pat. No. 4,837,414]. It would have been obvious to one of ordinary skill in the art to include memory and communication means since these were commonly used components of control

systems as shown by Edamula (Figure 2, #113, 115-116, 121, 123, 128) and since Edamula teaches that these components provided the advantage of inputting and controlling a pre-programmed recipe without the need for human intervention (column 1, lines 44-65).

This is a provisional obviousness-type double patenting rejection.

#### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 34-43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claims 34-43 recite a "first set of pre-programmed appliance functions" and a "second set of pre-programmed appliance functions that cannot be selected or controlled from the control panel". It is not clear what constitutes the first and second functions, or how they would differ, since the control system can receive the same type of input from a controller as it can from a control panel.

#### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 34-36 and 38-43 are rejected under 35 U.S.C. 102(b) as being anticipated by Edamula [Pat. No. 4,837,414].

Edamula teaches a cooking system comprising a control unit with buttons (column 2, line 38), a remote controller which selects and controls pre-programmed functions separate from the functions of the control unit (Figure 2, 101; column 2, lines 41-45), appliance control means with a memory which stores programs (Figure 2, 122-123), transmitting and receiving means between the remote controller and the appliance control means (Figure 2, #113, 115, 121, 128), display means for status information (Figure 2, 117), warning means (column 2, line 41). Phrases such as “wherein the status information includes...” are merely preferred methods of using the claimed apparatus and as such are not given patentable weight. Edamula also teaches a method of operating a cooking device by activating buttons on a control unit to provide information (column 2, line 38) and providing data signals to a controller to select pre-programmed control functions separate from the functions of the buttons (column 2, lines 41-45).

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Edamula as applied to claim 34 above, in view of Schwarzbacker et al [Pat. No. 5,710,409]. Edamula teaches the above mentioned components. Edamula teaches a clock in the appliance control means (column 5, line 28). Edamula does not teach a clock in the remote controller which updates the appliance clock. Schwarzbacker et al teach a cooking device comprising a remote control (Figure 1, 51) which includes a clock which updates the appliance (column 4, line 35). It would have been obvious to one of ordinary skill in the art to incorporate the second clock of Schwarzbacker et al into the invention of Edamula since both are directed to cooking devices, since Edamula already included a clock and remote controller which displayed the cooking time (Figures 5A-C), and since Schwarzbacker et al teach that the second clock can be used to adjust and modify the cooking time (column 4, line 38).

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Holling et al [Pat. No. 6,043,461], Edamura [Pat. No. 4,972,060], Ogle [Pat. No. 5,321,232], and Edamura [Pat. No. 4,933,527] teach cooking devices and methods of controlling them.

### ***Response to Arguments***


12. Applicant's arguments with respect to claims 34-43 have been considered but are moot in view of the new ground(s) of rejection.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 703-305-0300. The examiner can normally be reached on Monday-Thursday 7am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1495.

  
Drew Becker  
September 5, 2002